St. John's Law Review

Volume 12
Number 2 *Volume 12, April 1938, Number 2*

Article 15

May 2014

Contract of Sale--Statute of Frauds--Acceptance and Receipt by Vendee in Possession (Maher v. Randolph, 275 N.Y. 80 (1937))

St. John's Law Review

subject to rescission by the infant or, in the event of his death prior to attaining his majority, by his personal representative. That this is a well-known principle of law cannot be denied.[4] The law, however, distinguishes between the rights and duties of infants in civil life and those enlisted in the military service. An enlistment is more than a mere contract. It effects a change of status,[5] the infant becoming emancipated from the control of his parents, and, so long as he remains in the service, is amenable to the military law.[6] The Congress intended under the Act and its amendments to extend to minors as well as adults who served in the armed forces of the United States all of the rights and privileges of the Act, and to subject them to all of the conditions and limitations contained therein.[7] The age at which persons shall be deemed competent to do any acts or perform any duties depends wholly upon the Legislature.[8] The insurance policy provided that it was subject in all respects to the provisions of the Act creating it, of any amendments thereto, and of all regulations thereunder all of which, together with the application, formed the contract of insurance.[9] The Secretary of the Treasury was granted power under Section 13 of the Act to make and change regulations governing the administration of the law and pursuant to such authority determined that the contract of insurance shall lapse and terminate upon written request for cancellation from any policy holder.[10] By virtue of his change of status the rescission of the policy by the emancipated minor was valid and binding and the judgment for plaintiff was rightfully reversed.

M. F.

CONTRACT OF SALE—STATUTE OF FRAUDS—ACCEPTANCE AND RECEIPT BY VENDEE IN POSSESSION.—Plaintiff let an apartment to defendant and in addition to the apartment the lease included, among other furnishings, three pairs of draperies valued at $150. While defendant was still in possession of the draperies, he orally asked plaintiff if he would sell the draperies and plaintiff consented by saying: "Very well, the draperies are yours." On the day designated for payment of the purchase price defendant refused to perform whereupon plaintiff brought this action for breach of contract. Defendant

[4] Myers v. Hurley Motor Co., Inc., 273 U. S. 18, 47 Sup. Ct. 265 (1926); Mutual Life Ins. Co. v. Schiavone, 71 F. (2d) 980 (App. D. C. 1934).

[5] *In re* Grimley, 137 U. S. 147, 11 Sup. Ct. 54 (1890); *In re* Morrisey, 137 U. S. 157, 11 Sup. Ct. 57 (1890).

[6] United States v. Reaves, 126 Fed. 127 (C. C. A. 5th, 1903); *In re* Scott, 144 Fed. 79 (C. C. A. 9th, 1906).

[7] Von Der Lippi-Lipski v. United States, 4 F. (2d) 168 (App. D. C. 1925).

[8] Wasserman v. Feeney, 121 Mass. 93 (1876).

[9] White v. United States, 270 U. S. 175, 46 Sup. Ct. 274 (1926); Lynch v. United States, 292 U. S. 571, 54 Sup. Ct. 840 (1934).

[10] Treasury Decision No. 48, Sept. 29, 1919.

moved for dismissal on the ground that the oral contract was unenforceable by reason of the Statute of Frauds.[1] Plaintiff contended that no writing was necessary since there had been an acceptance and receipt of the draperies. On appeal, *held,* complaint dismissed. No such acceptance and receipt as would satisfy the Statute of Frauds is shown. *Maher v. Randolph,* 275 N. Y. 80, 9 N. E. (2d) 786 (1937).

The rule in New York, prior to the adoption of the Uniform Sales Act in 1911, was settled that the mere words of the bargain are not sufficient evidence to satisfy the statute in a case where the buyer already has possession of the goods under some prior and independent transaction of the parties.[2] This rule has not been altered by our adoption of the Uniform Sales Act for if such was the intention of the legislature they would have said so in an unmistakable manner.[3] The New York courts are stringent in laying down the rule as to what constitutes acceptance and receipt.[4] The statute is judicially interpreted as intending to exclude the possibility of either party creating the evidence which shall prove the oral contract as against the other.[5] Receipt implies delivery;[6] delivery that passes possession from seller to buyer pursuant to the *new* transaction.[7] This is so even where, in addition to retaining possession, the buyer has pasted labels containing his name as owner on the articles after the alleged oral contract of sale.[8] A literal adherence to these definitions would lead to the rather roundabout result of a buyer in possession under a prior transaction retransferring possession to the seller so that the seller might in turn make a new delivery pursuant to the oral contract of sale. As an alternative to effecting these numerous

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[1] N. Y. PERS. PROP. LAW § 85, subd. 1: "A contract to sell or a sale of any goods or choses in action of the value of fifty dollars or upwards shall not be enforceable by action unless the buyer shall accept part of the goods * * * and actually receive the same * * *, or unless some note or memorandum in writing of the contract or sale be signed by the party to be charged or his agent in that behalf."

[2] Schindler v. Houston, 1 N. Y. 261 (1848); Rodgers v. Phillips, 40 N. Y. 519 (1869); Marsh v. Rouse, 44 N. Y. 643 (1871); Hawley v. Keeler, 53 N. Y. 114 (1873); Young v. Ingalsbe, 208 N. Y. 503, 102 N. E. 590 (1913); Dorsey v. Pike, 50 Hun 534 (N. Y. 1889).

[3] Instant case at p. 84.

[4] Rodgers v. Phillips, 40 N. Y. 519 (1869); Hawley v. Keeler, 53 N. Y. 114 (1873). The term acceptance is adequately defined in the Uniform Sales Act and in New York it is found in N. Y. Pers. Prop. Law § 85, subd. 3. The different views of the several states is caused by the interpretation of what constitutes an actual receipt within the meaning of the statute. For majority view see note 14, *infra,* and for New York view note 2, *supra.*

[5] Hinchman v. Lincoln, 124 U. S. 38, 8 Sup. Ct. 369 (1888); Schindler v. Houston, 1 N. Y. 261 (1848).

[6] Cooke v. Millard, 65 N. Y. 352 (1875); Broom v. Joselson, 211 App. Div. 157, 206 N. Y. Supp. 841 (1st Dept. 1924); Dehority v. Paxson, 97 Ind. 253 (1884).

[7] Linde v. Huntington, 37 Misc. 212, 75 N. Y. Supp. 161 (1902).

[8] Young v. Ingalsbe, 208 N. Y. 503, 102 N. E. 590 (1913).

changes of possession there may be a symbolic delivery, *e.g.*, a key,[9] bills of lading,[10] warehouse receipts,[11] or other evidence of title.[12] This hard and fast New York rule has not escaped severe criticism from eminent writers [13] and the majority of our sister states [14] who hold that acceptance by word or conduct, by a vendee in possession under some prior and unrelated transaction, constitutes such an acceptance and receipt as contemplated by the statute.

On analysis, it appears that the New York rule more effectively closes the door to the opportunities of fraud. If a buyer in possession desired to secure the owner's property he could, by his own acts, show an acceptance and satisfy the statute even though the owner had never offered his goods for sale. Similarly could an owner of goods perjure himself to the extent of saying that the buyer in possession had orally or by conduct, accepted the goods thus effectuating a valid sale thereof to the buyer who had never intended to purchase.[15]

With the preceding situations in mind, the New York courts have limited the menacing possibilities of perjury and misunderstandings—thus carrying out the avowed purpose of the Statute of Frauds.

H. G. V.

CORPORATION—SUBSCRIPTION AGREEMENTS—MARTIN ACT.[1]—The plaintiff entered into a subscription agreement with the defendant corporation whereby the plaintiff subscribed to thirty units of the

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[9] Wilkes v. Ferris, 5 Johns. 335 (N. Y. 1810) (key to warehouse where goods were stored).

[10] Rodgers v. Phillips, 40 N. Y. 519 (1869).

[11] Whitlock v. Hay, 58 N. Y. 484 (1874).

[12] Jones v. Reynolds, 120 N. Y. 213, 24 N. E. 279 (1870) (on the oral sale of an unpatented device acceptance of and receipt of a model thereof held sufficient to satisfy the statute); see (1935) 20 CORN. L. Q. 226; 2 WILLISTON, CONTRACTS (Rev. ed. 1936) § 559.

[13] BROWNE, STATUTE OF FRAUDS (5th ed. 1895) § 322; BURDICK, A STATUTE FOR PROMOTING FRAUD (1916) 16 COL. L. REV. 273; RESTATEMENT, CONTRACTS (1932) § 202, subd. (1b) Illus. 3; 2 WILLISTON, CONTRACTS (Rev. ed. 1936) § 554.

[14] Wilson v. Hotchkiss, 171 Cal. 617, 154 Pac. 1 (1915); Devine v. Warner, 75 Conn. 375, 53 Atl. 782 (1903); Raldne Realty Corp. v. Brooks, 281 Mass. 233, 183 N. E. 419 (1932); Kenesaw Mill & Elevator Co. v. Aufdenkamp, 106 Neb. 246, 183 N. W. 294 (1921); Moore v. State, 118 Okla. 69, 246 Pac. 404 (1926); Mack Co. v. Bear River Milling Co., 63 Utah 565, 227 Pac. 1033 (1924); Snider v. Thrall, 56 Wis. 674, 14 N. W. 814 (1883). For English view see Edan v. Dudfield, 1 Q. B. Rep. 302 (1841).

[15] These examples are suggested from a close reading of the cases cited in note 2, *supra*.

[1] This statute is New York's Blue Sky Law. Blue Sky Laws: Laws that have been enacted for purpose of protecting the public "against the imposition of unsubstantial schemes and the securities based upon them", deriving their name from the fact that they are aimed at "speculative schemes which have no more basis than so many feet of blue sky". BOUVIER'S LAW DICTIONARY (Library ed. 1928).